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TO:	FROM:
Examiner R.M. Fetsuga	Paul D. Amrozowicz, Reg. No. 45,264 
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RE:	RECIPIENT'S REFERENCE NUMBER:
Reply Brief	10/668,819

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re application of: Russell D. WILFERT

Group Art Unit: 3751

Serial No.: 10/668,819

Examiner: R.M. Fetsuga

Filed: September 22, 2003

Confirmation No.: 1949

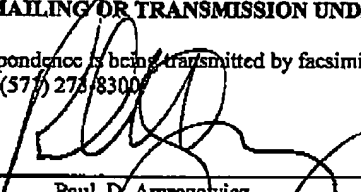
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For: VALVE ASSEMBLY HAVING A PRESSURE BALANCED SEGMENT SEAL

Docket No.: H0005158-3114

Customer No. : 000128

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CERTIFICATE OF MAILING OR TRANSMISSION UNDER 37 C.F.R. § 1.8(a)	
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REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

20

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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25

Sir:

This is a Reply Brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed November 1, 2005. Each of the topics in the Examiner's Answer for which a response is supplied herein are indicated using appropriate subheadings on the following pages. This Reply Brief does not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. As such, Appellant submits it is in full compliance with 37 C.F.R. § 41.41(a).

I. THE EXAMINER'S RESPONSE TO APPELLANT'S ARGUMENTS
AGAINST THE 35 U.S.C. § 112, FIRST PARAGRAPH REJECTION ARE LEGALLY
UNSUPPORTABLE AND LEGALLY UNTENABLE

On page 6 of the Examiner's Answer, the Examiner takes issue with the fact that independent Claims 1, 11, and 17 recite that the flow passage through the plug, when the plug is in the closed position, is not in fluid communication with the valve body fluid inlet and fluid outlet. For some reason, which continues to elude Appellant, the Examiner believes that this particular feature is "contradicted by the geometry of the claimed invention taken with the description thereof in the specification." Examiner's Answer at 6. The Examiner further alleges that Appellant's disclosure "teaches one that the claimed cross-sectional areas cooperate in such a way as to contradict what would be expected from the prior art." *Id.* In support of these allegations, the Examiner repeatedly references U.S. Patent No. 2,391,278 (Stark) as disclosing what he subjectively believes is the only acceptable configuration for a plug valve.

Firstly, it is unclear how a recited claim feature can be contradicted by the geometry of the claimed invention of which it forms a part. Secondly, the Examiner appears to be reading far too much into at least this particular claim feature than he reasonably should. Indeed, at least according to the preferred embodiment, when the plug is in the closed position, the plug flow passage is simultaneously not in fluid communication with both the valve body fluid inlet AND the valve body fluid outlet. In other words, according to the preferred embodiment, the plug flow passage, as shown most clearly in FIG. 2 of the application, is simultaneously isolated from both the valve body fluid inlet and the valve body fluid outlet. However, the claim language does not preclude, in other embodiments, the plug flow passage from being in fluid communication with either the valve body fluid inlet OR the valve body fluid outlet when the plug is in the closed position, only that the plug flow passage is not simultaneously in fluid communication with both the valve body fluid inlet and fluid outlet. For example, if, when placed in the closed position, the plug flow passage is in fluid communication with the valve body fluid inlet, but not in fluid communication with the valve body fluid outlet, the claim feature would still be met. This is because the plug flow passage would not be in fluid communication with the valve body fluid inlet AND valve body fluid outlet.

Nonetheless, even if Appellant were to concede (which it does not) that the claim language is limited to a configuration in which the plug flow passage is simultaneously not in fluid communication with both the valve body fluid inlet AND the valve body fluid outlet, this

does not preclude the ability of an ordinarily skilled artisan from making and using the invention. The art is replete with plug valves that are configured with this feature. As indicated in Appellant's Appeal Brief, the Examiner has cited no evidence whatsoever that one could not make and use the claimed invention.

5 As to the Examiner's assertion that the invention is not enabled because it would allegedly contradict what would be expected from the prior art, he has yet to provide any sound evidence of this beyond mere allegation. As noted above, the Examiner cites Stark as providing support. However, this repeated citation of one particular configuration of a plug valve with a segment seal ignores the remaining art of record that discloses different, albeit "acceptable,"
10 valve configurations. Just because Stark discloses one particular preferred valve configuration does not preclude enablement of other valve configurations. A mere allegation, or the Examiner's subjective belief, that the claimed invention is not enabled unless it is configured like Stark is not evidence and cannot support a lack of enablement rejection. Not one shred of credible evidence beyond the Examiner's subjective belief that the valve cannot operate as
15 described unless, of course it is configured like Stark, has been proffered. Moreover, even if the valve did not provide the intended benefit that the disclosure describes, the fact remains that one of ordinary skill in the art can make and use the invention without undue experimentation. This, in total, is the standard that is to be applied.

The Examiner also argues that Appellants previous statements regarding the seal, namely
20 that the seal also supplies a force that acts to push the segment seal main body toward the outlet, is not supported by the disclosure. In particular, the Examiner alleges that the statement in the disclosure that the seal is "compressed over a wide range of fluid pressures," does not provide support for the seal exerting a force on the seal assembly. Examiner's Answer at 7. This, of course, is an untenable position to take and is also a disingenuous interpretation of the disclosure.
25 First of all, Appellant notes that the proper quotation is that the seal "will be sufficiently compressed over a wide range of fluid pressures." Thus, it is abundantly clear to the person of ordinary skill that forces due to fluid pressure on both sides of the segment seal assembly main body, together with the "sufficient" force supplied from the seal, supply (at least in part) the resultant net force. Of course, the Examiner further alleges that the force from the seal is not
30 recited in the claims, and that just because the seal is compressed does not mean it supplies a force. Id. Yet, it is unclear how one can make and use a valve in which the seal forms a sealed vent region between the main body first side and the plug outer surface, as recited in the

independent claims, without the seal providing a force when it is compressed. This is just elementary physics. When the seal is compressed, via a force that is supplied thereto, it will supply a reaction force to the body that is compressing it.

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II. U.S. PATENT NO. 2,506,097 (MELICHAR) DOES NOT TEACH WHAT THE EXAMINER ALLEGES

10 The Examiner alleges that a single line in Melichar discloses or suggests a sealed vent region having a cross sectional area that is less than the defined cross sectional flow area of the valve body fluid inlet or outlet. In particular, the Examiner alleges that the following statement, recited at col. 4, ll. 20-25, discloses or suggests this feature: "[t]he area of the circular recess in the valve rotor is so dimensioned relative to the faces of the port that the valve is balanced so far as the fluid pressure is concerned so that the spring does not have to operate against the fluid

15 pressure in the hold of the valve seated and the port closed." This statement, however, clearly teaches away from providing a sealed vent region that is less than the defined cross sectional flow area. More specifically, as noted by the Examiner, this disclosure does indeed teach the ordinarily skilled artisan that a relationship between the relative sizes of the cross-sectional areas and the spring bias does exist. Examiner's Answer at 8. However, contrary to the Examiner's

20 assertion, it explicitly teaches implementing these sizes to allow using a spring that supplies a relatively lower bias force. Thus, use of a larger bias force spring, which is the Examiner's motivation for the alleged obviousness of this feature, is in direct opposition to what Melichar teaches.

25 The Examiner also alleges that Appellant has not specified where in Melichar that this reference teaches a vent region having a cross section area that is, at a minimum, equal to the cross sectional flow area of the valve body fluid ports. First of all, it is clear that the above-noted citation of column 4, lines 20-25 explicitly discloses this. Moreover, one need only look at the figures of Melichar, and most notably figure 3, to see another place at which this feature is explicitly disclosed. Finally, the fact that Melichar does not include this feature in any of the

30 claims has no relevance whatsoever to the remaining portions of the disclosure that explicitly disclose this feature. There are numerous features disclosed in Melichar, as well as the other art of record, that do not find their way into the claims.

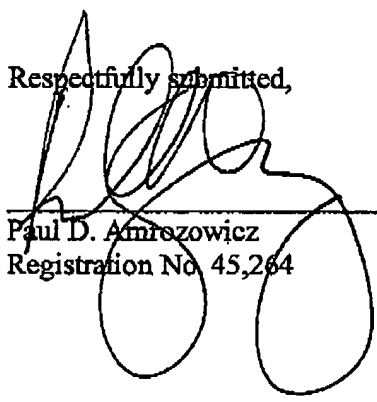
III. CONCLUSION

In conclusion, Appellant wishes to point out the clear circularity of the Examiner's position, at least with regard to 35 U.S.C. § 112, first paragraph. In particular, the Examiner on the one hand alleges that the claimed invention is not disclosed in a manner sufficient to enable one of skill in the art to make and use the invention. Then, on the other hand, the Examiner alleges that the invention would nonetheless be obvious to make. Clearly, both positions cannot be true. Moreover, it is clear that none of the cited references teach or suggest all of the features of at least the independent claims. Indeed, the art explicitly teaches away from the claimed invention.

In view of the foregoing, Appellant once again submits that the final rejection of Claims 1-20 is improper and should not be sustained. In any case, Appellants respectfully request a reversal of the rejections in the final Office Action dated April 8, 2005.

Dated 12/28/05

Respectfully submitted,


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